IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.7029 of 2006
SCI INDIA LIMITED
Versus
THE STATE OF BIHAR & ORS

For the petitioner:Mr. Satyabir Bharti
For the respondents : Mrs. Nilu Agrawal, GA - X

P R E S E N T

Hon'ble the Chief Justice
And
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 26th August, 2008

The counsel for the petitioner submits that the controversy raised in this writ petition is concluded by a Division Bench judgment of this Court in the case of McDowell & Co. Limited vs. The State of Bihar & Ors., 2006 (4) PLJR 269.

2. In paragraphs – 13, 14 & 16 of the report the Division Bench has held thus:

> 13. On careful consideration of the case laws, noticed above, and the relevant constitutional provisions, it is clear that Bench of three Judges of the Supreme Court in the case of State of U.P.vs. Modi Distillery (supra) have relied upon judgment of Constitution Bench in the case of Synthetics and Chemicals Ltd. (supra) and decided in favour of the contention raised on behalf of the petitioner that State can levy excise duty only upon alcoholic liquor fit for human consumption when its manufacture is complete and not upon the raw material or input still in process of being rendered fit for consumption by human beings. State cannot impose duty of excise or sales tax on industrial alcohol i.e. alcohol unfit for human consumption. Again the judgment in the case of Deccan Sugar and Akbari Co.Ltd. vs. Commissioner of Excise (supra) by three

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Judges of the Supreme Court clearly supports the stand of the petitioner that State Legislature cannot impose any excise duty on rectified spirit because it does not fall under the category of potable liquor fit for human consumption.

14. So far as judgments cited by the learned Advocate General are concerned, they deal only with situations requiring administrative control over manufacture of rectified spirit for purpose of further use and in that context the power of the State Government was recognised that it can frame schemes to ensure that such rectified spirit is removed or used only for lawful purposes and not for manufacture of illegal potable liquor in the State. The issue in those cases were different and did not relate to the controversy at hand as to whether the State Government can impose excise duty upon alcoholic liquor unfit for human consumption directly or even by way of penalty under the Excise Act. So far as this issue is concerned, the stand of the petitioner is fully supported by judgments of the Apex Court cited on behalf of the petitioner on the basis whereof it can safely be held that State cannot levy excise duty on rectified spirit or other kind of alcohol unfit for human consumption and it cannot do so even by resorting to levy penalty on the ground of alleged loss or inefficiency in the system of a distiller engaged in manufacture of industrial alcohol, rectified spirit or any alcoholic liquor unfit for human consumption.

16.Since the demand of penalty by way of duty of excise on deemed loss of rectified spirit due to inefficient manufacturing process of the petitioner is beyond the legislative competence of the State Legislature and in fact not contemplated by the provisions of the Act nor the State is competent to impose Sales Tax on industrial alcohol and that too, by way of penalty, hence, the impugned order of the Excise Commissioner and the impugned demand have to be quashed. They are quashed accordingly."

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3. For the self-same reasons, we quash the order dated 11th March, 2005 passed by the Excise Commissioner, Bihar, Patna

and the demand notice dated 4th April, 2006.

4. Rule 15B has already been declared ultra vires in McDowell & Col. Ltd. and, therefore, no further declaration is necessary by us.

5. In the facts of the case, there shall be no order as to costs.

R. M. Lodha, CJ.

Kishore K. Mandal, J.

Neyaz/-

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